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UNCLAS SECTION 01 OF 02 QUITO 002223

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E.O. 12958: N/A

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SUBJECT: CONGRESS DEBATES REFERENDUM QUESTIONS

REF: QUITO 1976

11. (SBU) Summary: Minister of Government Oswaldo Molestina sent an initial draft of referendum questions to Congress on September 27. Congress are currently wading through the text of 17 proposed questions designed to probe citizens' opinions on everything from limiting campaign advertisements to confirming a new Supreme Court. Issues that legislators deem matters of "national urgency" will go forward to a vote; the Palacio government hopes that vote can take place by December 11.

12. (SBU) Approval of high court members represents the most critical question on the ballot, since it risks invalidating the process to fill the void in the court that has existed since April. Some fear that voters disenchanted with the administration could torpedo that progress, leaving the judiciary no farther ahead than it was when former President Gutierrez disbanded the court. OAS observers warn that a poorly phrased question in the current draft could create a new vacuum if the people vote "no." End Summary.

13. (SBU) The referendum proposal grew out of the irregular circumstances that brought President Palacio to power. Quito street protests initially focused on ex-president Lucio Gutierrez' ouster were later interpreted as calls for systemic change. Palacio assigned his Vice President to lead a process to collect suggestions for reform from the public, with constitutional changes to be decided by referendum (see RefTel).

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The Questions Please...  
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16. (U) Highlights of the 17 questions are as follows:

Congress:

-- Congress will be in full session only three months a year with its seven commissions working during recess months.

-- A Senate of national representatives would be created to augment the existing Congress of provincial representatives, thereby creating a bicameral legislature. (Note: The administration's intention is for the new bicameral congress to remain at 100 members, resulting in two small chambers.)

Elections:

-- National and local elections would be by defined electoral districts, not party lists.

-- Media time available for campaign advertisements would be controlled and divided equally among political parties.

-- Primary elections would be required for candidates for president, vice president, mayor and provincial governor, with parties offering at least two candidates to primary voters.

Courts:

-- Supreme Court: Option 1: Approve the current process underway to select and appoint Supreme Court judges. Option 2: If the judges have not yet been selected, authorize the President to convene an assembly to designate judges within 30 days.

-- A non-partisan Court for Electoral Justice would be created to consider violations of election law and monitor campaign funding.

-- Electoral Court judges would need the same qualifications as supreme court judges.

-- Constitutional Court judges would also need the same qualification requirements as Supreme Court judges.

Political Parties:

-- Political parties would be required to have a platform, a political action plan and support from more than 5% of the public nationwide. Parties falling below 5% support would be

required to disband or join with others to meet the requirement.

-- Political parties should hold party elections every two years overseen by the Tribunal Supremo Electoral.

#### Reform:

-- Constitutional reforms may go into effect three months after their first debate within Congress and after an 3/5 approval vote in the second debate.

-- Congress has 30 days to consider the urgency of any constitutional reform proposals (versus the current one year for reforms not qualified as of national urgency).

-- Reforms enacted as a result of the referendum vote cannot be modified for at least eight years.

#### Impeachment and Other Authority Issues:

-- Permit the popular recall by voters of the president, vice president and other elected officials after they have completed half of their terms.

-- The President has authority to appoint the Minister of Government to serve as chief of the cabinet.

-- Guarantee the right to autonomy and self governance of provinces and regions.

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Double the Fun  
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14. (U) Molestina has asked lawmakers to approve the referendum questions by October 7 to accommodate voting on December 11. President Palacio has warned Congress to act quickly on the referendum, saying he would not hesitate to take "a constitutional decision" if lawmakers do not act quickly. Congressional action is desired by the executive by October 7 because the Supreme Electoral Tribunal requires 60 days to prepare for the referendum, which would require obligatory voting under Ecuadorian law.

15. (U) Congress is under no legal time constraint to act, however, and some Congress members are already casting doubt on that schedule, saying that February is a more realistic timeframe for the plebiscite. Molestina has invited Congress to offer alternatives to the Government's questions, allowing voters to decide between them. That could conceivably double the number of proposals on the ballot.

16. (SBU) It is much more likely that the list of questions will be substantially reduced after public debate. Molestina told the Ambassador on September 26 that his initial draft reform proposals would be exhaustive, in the expectation that the list of questions will be reduced after dialogue with party leaders. Some members of Congress have commented that there are too many questions and that they are hard to understand. Others have criticized Molestina's proposals for overlooking suggestions collected from the public; instead selectively reflecting the administration's own reform agenda. Molestina has defended the draft list as reflecting the interests of the people.

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Comment  
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17. (SBU) Palacio's appointment of Molestina, a popular member of the Democratic Left party, has improved prospects for negotiations with Congress. Given time constraints involved in holding a December referendum, and the difficulty entailed in implementing electoral reforms before the 2006 national elections, it is likely that those negotiations will progressively trim the list of questions to a core of four or five proposals, including ratification of the new Supreme Court.

18. (SBU) With a record of two previous referendum attempts (under previous presidents) failing after being converted into anti-government plebescites, the risks inherent in putting the Supreme Court issue to the people merit special attention. OAS judicial expert and Chilean Senator Carlos Viera warned OAS diplomats on September 28 that the Supreme Court question should be changed. The new Supreme Court is likely to be constituted by mid-November, he said, prior to any referendum. If voters reject that court, a new vacuum would be created, since option two is available only in the event a court has not been selected. We will support OAS efforts to correct this deficiency, and consider other ways to prevent the new court from being undermined.

JEWELL